

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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FRANCISCO FERREIRA, individually and on  
behalf of all others similarly situated,

Plaintiffs,

-against-

MODELL'S SPORTING GOODS, INC., and  
HENRY MODELL & COMPANY, INC.,

Defendants.  
----- X

Civil Action No. 11-cv-02395 (DAB) (AJP)

**JOINT MOTION FOR PRELIMINARY APPROVAL OF  
SETTLEMENT OF COLLECTIVE AND CLASS ACTION**

Pursuant to 29 U.S.C. § 216(b) and Fed. R. Civ. P. 23(e), Plaintiff Francisco Ferreira ("Plaintiff") and Defendants Modell's Sporting Goods, Inc. and Henry Modell & Company, Inc. (collectively referred to herein as "Modell's" or "Defendants"), by and through their respective attorneys, submit this Joint Motion for Preliminary Approval of Settlement of Collective and Class Action ("Joint Motion"). In support of this Joint Motion, and as more fully explained in the parties' supporting Memorandum of Law, submitted herewith, Plaintiff and Defendants state as follows:

1. This is a putative collective and class action lawsuit for damages against Defendants based on Plaintiff's claim that Defendants violated federal and state wage-and-hour laws, including the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*, and analogous wage and hour laws in effect in various states, including New York State's Labor Law, §§ 650, *et seq.* (the "Action").

2. The parties to the Action have agreed to settle the Action according to the terms of the Settlement Agreement, Release, and Waiver (the "Settlement Agreement") submitted with this Joint Motion.

3. The proposed settlement is the product of arm's-length negotiations, has no obvious deficiencies, and does not improperly grant preferential treatment to the class representatives or segments of the proposed settlement class. It therefore falls within the range of possible judicial approval such that both the prompt scheduling of a formal fairness hearing and the expeditious final approval of the settlement are appropriate.

4. To effect the settlement, Plaintiff requests that the Court conditionally certify Settlement Classes, for settlement purposes only, as follows:

- (a) The Federal Class shall include all individuals who have filed consents to join the Action (including without limitation all individuals who timely return a valid Claim Form containing a consent to join the Action) and who worked for Modell's as an ASM in any state in the United States within the three years prior to filing their consent to join the Action through the date that the Court grants preliminary approval of the Settlement and who, as ASMs, were classified as exempt by Modell's. The Federal Class Period shall run until the date of such preliminary approval.
- (b) The State Class shall include all individuals employed as ASMs for Modell's during the time periods specified below and who, as ASMs, were classified as exempt by Modell's. The State Class Periods shall run until the date of preliminary approval.
  - (i) In Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, Pennsylvania, Rhode Island, Virginia, and the District of Columbia, at any time from three (3) years prior to the filing of the Amended Complaint, through the date that the Court grants preliminary approval of the Settlement.
  - (ii) In New York, at any time from six (6) years prior to April 8, 2011, through the date that the Court grants preliminary approval of the Settlement.



5. Plaintiff further requests, for purposes of settlement only, that the Court appoint Seth R. Lesser and Fran Rudich and their respective law firm, and Marc S. Hepworth, Esq., David A. Roth, Esq. and Charles Gershbaum, Esq. and their respective law firm as “Class Counsel” and appoint Plaintiff Ferreira as “Class Representative.”

6. Plaintiff and Defendants jointly request, for settlement purposes only, that the Court find that the proposed form and manner of notifying the settlement class of this proposed settlement complies with the standards of fairness, completeness and neutrality required of a settlement class notice under federal law and the requirements of due process, and that the Court appoint RG/2 Claims Administration LLC as “Claims Administrator” pursuant to the Settlement Agreement.

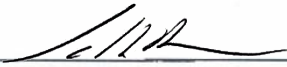
### CONCLUSION

For all of the foregoing reasons and for the reasons set forth in the accompanying Memorandum of Law, the Court should (1) preliminarily approve the proposed settlement; (2) conditionally certify the proposed Settlement Classes for settlement purposes only;<sup>1</sup> (3) approve the proposed form of notice and the manner of disseminating the notice; (4) appoint Class Counsel, Class Representative and Claims Administrator; (5) set dates by which members of the Settlement Class must submit objections, requests for exclusions, and claims under the proposed settlement; and (6) schedule the final settlement approval hearing.

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<sup>1</sup> Defendants support certification of this matter as both a class and collective action for settlement purposes only. In doing so, Defendants take no position on whether each of the requirements for class certification have been met, and expressly reserve the right to oppose certification of any litigation class in this or any other matter, on any grounds, in the event that the Settlement Effective Date does not occur.

FRANCISCO FERREIRA

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